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General Assembly

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Item 80 of the preliminary list*

Responsibility of States for internationally wrongful acts

Comments and information received from Governments

Report of the Secretary-General

Addendum

I. Introduction

As at 11 June 2007, the Secretary-General had received written comments from the United States of America (dated 8 May 2007), which are reproduced below.

II. Comments on any future action regarding the articles on responsibility of States for internationally wrongful acts

United States of America

1. The United States of America once again extends its congratulations to the International Law Commission for completing in 2001 its important project on the topic of the responsibility of States for internationally wrongful acts and its appreciation to the five Special Rapporteurs who contributed significantly to the completion of the project.

2. The Sixth Committee and the General Assembly have considered the future of the draft articles on two occasions. In 2001, the General Assembly welcomed the draft articles in its resolution 56/83, which contained the text of the draft articles as an annex, and "commend[ed] them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action". In 2004, the Assembly postponed further consideration of the final form of the draft articles in the Assembly until its sixty-second session, to be held in 2007.

* A/62/50.

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3. The United States believes that the action of the General Assembly in 2001 in commending the draft articles to the attention of Governments was the right course of action to adopt.

4. There is a large body of well-established state practice pertaining to many of the issues covered by the draft articles. The draft articles of the International Law Commission have shown themselves to be useful in their current, non-binding form, as a guide to States and other international actors on either what the law is or how the law might be progressively developed. It is difficult to see what would be gained by the adoption of a convention. Indeed, the negotiation of a convention would risk undermining the very important work that has been undertaken by the Commission on this topic, particularly if a significant number of States did not ratify the resulting convention. For these reasons, the United States believes that no further action need be taken on this topic.

III. Information on State practice regarding the articles on responsibility of States for internationally wrongful acts

United States of America

The following table provides information on decisions of United States courts referring to the draft articles on state responsibility since October 2001:

United States Court of Appeals	*Compagnie Noga D'Importation Et D'exp. S.A. v. Russian Federation*	361 F.3d 676, 2004 U.S. App. LEXIS 4893 (2D Cir. N.Y. 2004)	p. 619 and note 13	Article 4 and commentary, para. 4 (conduct of organ of a State)
United States District Court	*Villeda Aldana v. Fresh Del Monte Produce, Inc.*	305 F. Supp. 2d 1285 (S.D. Fla. 2003)	p. 1303	Article 8 (conduct directed or controlled by a State)